

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL CASTALDO, *individually and on
behalf of all others similarly situated*,

Plaintiff,

-v.-

ACASTI PHARMA, INC., RODERICK
CARTER, JAN D'ALVISE, JOHN CANAN, and
DONALD OLDS,

Defendants.

21 Civ. 6051 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

On June 21, 2022, the Court issued an Order granting Plaintiff Michael Castaldo's request to proceed *in forma pauperis*, denying his request for *pro bono* counsel, and ordering him to file his opposition to Defendants' pending motion to dismiss on or before August 1, 2022. (Dkt. #44). The Order concluded by stating that Plaintiff's failure to file an opposition brief by August 1, 2022, would result in the dismissal of this case without prejudice. (*Id.* at 4).

Upon further reflection, the Court now clarifies that Plaintiff's failure to oppose Defendants' motion will not, on its own, result in the dismissal of his case. Rather, if Plaintiff does not file an opposition brief by August 1, 2022, the Court will treat Defendants' motion as unopposed and engage in its own analysis of the legal sufficiency of Plaintiffs' claims. *See Pearson v. Gesner*, No. 21 Civ. 05670 (PMH), 2022 WL 1523166, at *4 (S.D.N.Y. May 13, 2022) (observing that "although a party is of course to be given a reasonable opportunity to respond to an opponent's motion, the sufficiency of a complaint is a matter of law that the court is capable of determining based on its own

reading of the pleading and knowledge of the law”); *see also James v. John Jay Coll. of Crim. Just.*, 776 F. App’x 723, 724 (2d Cir. 2019) (summary order) (stating that a district court errs by dismissing a complaint solely on the ground that the plaintiff failed to oppose a motion to dismiss).

The Clerk of Court is directed to mail a copy of this Order to Plaintiff at the following address:

Mr. Michael Castaldo
PO Box 102402
Denver, Colorado 80250

SO ORDERED.

Dated: June 23, 2022
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Failla".

KATHERINE POLK FAILLA
United States District Judge